WEST VIRGINIA CODE: §33-4-13

§33-4-13. Service of process on unlicensed insurers.

(a) The purpose of this section is to subject certain insurers to the jurisdiction of the courts of this state in suits by or on behalf of insureds or beneficiaries under certain insurance contracts and to subject said insurers to the jurisdiction of the courts of this state in suits by or on behalf of the Insurance Commissioner of West Virginia. The Legislature declares that it is a subject of concern that certain insurers, while not licensed to transact insurance in this state, are soliciting the sale of insurance and selling insurance to residents of this state, thus presenting the Insurance Commissioner with the problem of resorting to courts of foreign jurisdictions for the purpose of enforcing the insurance laws of this state for the protection of our citizens. The Legislature declares that it is also a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers not licensed to transact insurance in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant fora for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers and declares that in so doing it exercises its powers to protect its residents and to define, for the purpose of this section, what constitutes transacting insurance in this state, and also exercises powers and privileges available to the state by virtue of public law number fifteen, seventy-ninth Congress of the United States, chapter twenty, first session, Senate number three hundred forty, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

(b) (1) Any of the following acts in this state, effected by mail or otherwise, by an unlicensed foreign or alien insurer: (i) The issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (ii) the solicitation of applications for such contracts, (iii) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (iv) any other transaction of business, is equivalent to and shall constitute an appointment by such insurer of the Secretary of State and his or her successor in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and in any action, suit or proceeding which may be instituted by the Insurance Commissioner in the name of any such insured or beneficiary or in the name of the State of West Virginia, and in any administrative proceeding before the commissioner, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(2) Such service of process upon any such insurer or upon an insurer pursuant to section twenty-two, article three of this chapter in any such action or proceeding in any court of competent jurisdiction of this state, or in any administrative proceeding before the

commissioner, may be made by serving the Secretary of State or his or her chief clerk with two copies and an original thereof and the payment to him or her of the fee required by section two, article one, chapter fifty-nine of this code. The Secretary of State shall forward a copy of such process by registered or certified mail to the defendant at its last-known principal place of business and shall keep a record of all process so served upon him or her. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten days thereafter by or on behalf of the plaintiff or moving party to the defendant, or responding party, at its last-known principal place of business by registered or certified mail with return receipt requested. The plaintiff or moving party shall file with the clerk of the court in which the action is pending, or with the judge or magistrate of such court in case there be no clerk, or in the official records of the commissioner if an administrative proceeding before the commissioner, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the defendant or responding party or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or responding party or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused. Service of process so made shall be deemed to have been made within the territorial jurisdiction of any court in this state.

(3) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subdivision (2) of this subsection (b) be valid if served upon any person within this state who, in this state on behalf of such insurer, is

(A) Soliciting insurance, or

(B) Making, issuing or delivering any contract of insurance, or

(C) Collecting or receiving any premium, membership fee, assessment or other consideration for insurance: Provided, That notice of such service and a copy of such process are sent within ten days thereafter, by or on behalf of the plaintiff or moving party to the defendant or responding party at the last-known principal place of business of the defendant or responding party, by registered or certified mail with return receipt requested. The plaintiff or moving party shall file with the clerk of the court in which the action is pending, or with the judge or magistrate of such court in case there be no clerk, or in the official records of the commissioner if an administrative proceeding before the commissioner, an affidavit of compliance herewith, a copy of the process and either a return receipt purporting to be signed by the defendant or responding party, or a person qualified to receive its registered or certified mail in accordance with the rules and customs of the post-office department; or, if acceptance was refused by the defendant or responding party, or an agent thereof, the original envelope bearing a notation by the postal authorities that receipt was refused.

(4) The papers referred to in subdivisions (2) and (3) of this subsection (b) shall be filed within thirty days after the return receipt or other official proof of delivery or the original envelope bearing a notation of refusal, as the case may be, is received by the plaintiff or

WV Legislature

moving party. Service of process shall be complete ten days after such process and the accompanying papers are filed in accordance with this section.

(5) Nothing in this section contained shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(c) (1) Before any unauthorized or unlicensed foreign or alien insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, or any notice, order, pleading or process in an administrative proceeding before the commissioner instituted against such insurer, such unauthorized or unlicensed insurer shall either: (i) Deposit with the clerk of the court in which such action, suit or proceeding is pending, or with the commissioner in an administrative proceeding before the commissioner, cash or securities or file with such clerk or the commissioner a bond with good and sufficient sureties, to be approved by the court or the commissioner, in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding: Provided, That the court or the commissioner may in its, his or her respective discretion make an order dispensing with such deposit or bond where the Auditor of the state shall have certified to such court or commissioner that such insurer maintains within this state funds or securities in trust or otherwise sufficient and available to satisfy any final judgment which may be entered in such action, suit or proceeding; or (ii) procure a license to transact insurance in this state.

(2) The court or the commissioner in any action, suit or proceeding in which service is made in the manner provided in subdivision (2) or (3), subsection (b) of this section may, in its, his or her respective discretion, order such postponement as may be necessary to afford the defendant or responding party reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (c) and to defend such action or proceeding.

(3) Nothing in subdivision (1) of this subsection (c) is to be construed to prevent an unauthorized or unlicensed foreign or alien insurer from filing a motion to set aside service thereof made in the manner provided in subdivision (2) or (3), subsection (b) of this section on the grounds that such insurer has not done any of the acts enumerated in subdivision (1), subsection (b) of this section, or in section twenty-two, article three of this chapter.

(d) In any action against an unauthorized or unlicensed foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney's fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half percent of the amount which the court finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than $25. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

WV Legislature